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MAR -9 2005

Paper No. 17

In re Application of :
Donald H. Felsenthal :
Application No. 09/971,625 : DECISION ON PETITION
Filed: October 9, 2001 :
For: Garment Bag Pocket Assembly :

This is a decision on the petition filed on July 19, 2004 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the final Office action dated June 11, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that this application is not abandoned because petitioner did in fact file a timely reply to the Office action in question. Petitioner supports this allegation by submitting a copy of the reply which took the form of a Request for Continued Examination (RCE) pursuant to 37 CFR 1.114, together with a submission in the form of a request to enter a previously filed amendment after final action, a request for a one month extension of time, checks for the RCE and extension fees, and a copy of a receipt for the filing of these items. The filing receipt shows that the papers and fees were in fact received in the Office on December 11, 2003, a date within the period for filing a reply to Office letter in question, as extended by three months. A request for a two month extension of time together with the fee therefor had previously been filed, and the filing of the RCE required that an additional one month extension of time together with a check for \$110.00 for "a one month extension of time." The \$110.00 fee was insufficient, because the proper fee for a third month's extension after previously paying the fee for a two month extension of time would have been \$530.00, the difference between the \$950.00 fee for a three month extension of time and the previously submitted \$420.00 fee for a two month extension of time. However, the RCE included an authorization to charge any additional fees. Therefore, the RCE was in fact timely filed.

Based upon the filing of a timely RCE, it is clear that this application is not abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. However, although Office financial records confirm receipt of the RCE filing fee and \$110.00 check for an additional one month extension, the balance due for the required third month extension of time fee has not yet been charged. The application is being forwarded to the Head Supervisory Applications Examiner for entry of the RCE that is attached to the petition. The date to which the RCE is entitled is December 11, 2003. A fee of \$420.00 for the balance due on the third month extension of time will be charged to Deposit Account No. 18-2361. Thereafter, the application will be forwarded to the examiner for immediate consideration and appropriate action.

PETITION GRANTED.

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